



Legislative Bulletin.....March 22, 2007

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H.R. 1433—District of Columbia House Voting Rights Act

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$9 million over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$1 million increase over five years

Total New State & Local Government Mandates: 1

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 1433—District of Columbia House Voting Rights Act (*Delegate Norton, D-DC*)

Order of Business: As of press time, it was not clear when this bill would come to the House floor. It may be considered as early as Thursday morning, March 22nd, subject to a rule. A summary of the amendments made in order under the rule, if any, will be summarized in a separate RSC document. The Rules Committee has instructed Members to draft any amendments to the *introduced* version of the bill, thus the summary below is of the introduced version.

Summary (as introduced): H.R. 1433 would statutorily deem (without amending the U.S. Constitution) the District of Columbia ("DC") as a congressional district for purposes of

representation in the U.S. House of Representatives. The permanent number of members in the House of Representatives would be increased to 437, including any DC representative(s), effective for the 110th Congress and each subsequent Congress.

Within 30 days of this bill's enactment, the President would have to transmit to Congress a revised version of the most recent statement of apportionment (of House seats based on population) to take into account this legislation. Within 15 calendar days of receiving the revised version of the statement of apportionment, the Clerk of the House of Representatives would have to send to the executive of each state a certificate of the number of representatives to which such state is now entitled, and submit a report to the Speaker of the House of Representatives identifying the state (other than the District of Columbia) that is entitled to one additional representative (Utah is currently next in line for a new seat under the latest apportionment report, so presumably this new representative would go to Utah, at least at first. After the next reapportionment in 2012, the seat could go to another state.). For the 110-112th Congresses, this additional representative would have to represent a state at-large (after a special election). The other representatives to which such state is entitled would be elected on the basis of the congressional districts in effect in the state for the 109th Congress. This new at-large representative and the new representative from DC would have to be sworn in as House Members on the same day.

Immediately upon the swearing in of the DC representative, the office of the DC Delegate would be repealed, as would DC's Office of Statehood Representative. (The office seeking senators for DC would remain.) DC residents would thereafter vote only for a full member of the House instead of a shadow representative, but would still vote for shadow senators.

Additionally, this bill would:

- Provide that reapportionment of congressional districts could never yield DC more than one additional seat;
- Preserve DC's three electoral votes in presidential elections;
- Make a variety of conforming amendments regarding the military service academies, the DC Statehood Commission, and the switch from the DC delegate to the DC representative.

The bill contains a nonseverability clause, which provides that: "If any provision of this Act, or any amendment made by this Act, is declared or held invalid or unenforceable, the remaining provisions of this Act and any amendment made by this Act shall be treated and deemed invalid and shall have no force or effect of law." However, the legislation contains no provision for expedited judicial review.

The bill also includes four congressional findings:

- "Over half a million people living in the District of Columbia, the capital of our democratic Nation, lack direct voting representation in the United States Senate and House of Representatives;
- "District of Columbia residents have fought and died to defend our democracy in every war since the War of Independence;
- "District of Columbia residents pay billions of dollars in Federal taxes each year; and

- “Our Nation is founded on the principles of ‘one person, one vote’ and ‘government by the consent of the governed’.” (*emphasis added*)

Additional Background: The American Founding Fathers put in the United States Constitution, in one clause, the power for Congress to create the District of Columbia and to control it legislatively. Specifically, Article I, Section 8, Clause 17 gives Congress the power “To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.”

Note: This clause does not give Congress the ability to do whatever it wants within the boundaries of the District. For example, Congress cannot violate the Constitution in its exercise of “exclusive Legislation” over the district. Congress can merely exercise its enumerated powers (primarily listed in Article I, Section 8) in the District. Congress, for example, cannot establish a religion in the District, since the Constitution says that “Congress shall make no law respecting an establishment of religion.” (First Amendment).

As is evident in Article I, Section 8, Clause 17 (often known as “The District Clause”), the District of Columbia was created specifically so that it would NOT be a state or have the legislative function of a state. On the contrary, the Founders gave the District the same legislative stature as forts and dock-yards. The District was never intended to have independent legislative or representational authority; that is why a separate capital district was carved out of two states (Maryland and Virginia) in the first place. Otherwise, the capital city could have just been a city in an existing state, with its residents being represented in Congress like any other citizens.

The Founders deliberately crafted DC as a representationally neutral zone, in order to help quell the North-South regional conflict that had already emerged—decades before the Civil War. (Northern states were afraid of a permanent American capital in a southern state, and southern states were afraid of a permanent American capital in a northern state. Thus, the capital was created as a neutral non-state. It was created in the south—even Maryland was considered a southern state at the time—as an offset to Alexander Hamilton’s financial plan, which included state debt relief that would have far greater benefits for the northern states than for the southern ones. And the main “road”—essentially a swampy path at the time—connecting the Capitol Building and the White House was named Pennsylvania Avenue to smooth over the hurt feelings from moving the capital from Philadelphia to Washington, DC.)

Various interests in the 18th Century feared that a federal legislature located in a state would be inherently biased toward that state and thus unable to equally represent all the states. As James Madison wrote in Federalist 43, if the seat of the federal government were within a single state, it would “abridge its necessary independence.” Madison continues: “The extent of this federal district is sufficiently circumscribed to satisfy every jealousy of an opposite nature.” In other words, the district was created to balance the competing pressures, loyalties, and interests of various factions and states in the country.

When writing about whether the citizens of Virginia and Maryland would agree to cede land for the creation of a federal district for the nation's capital, Madison argued, "the inhabitants will find sufficient inducements of interest to become willing parties of the cession; as they will have had their voice in the election of the Government which is to exercise authority over them." Thus, the authors of the Constitution never intended for residents of the federal district to have independent representation to Congress, for which the district was created.

Also in Federalist 43, Madison describes the congressional authority over forts established by the federal government as "like authority" to that over the federal district and argues that forts too "should be exempt from the authority of the particular State."

In addition to the district clause of the Constitution, Article I, Section 2, Clause 1 of the Constitution deems that the House of Representatives "shall be composed of Members chosen every second Year by the People of the several States...." In other words, the Founders intended for the House to be comprised of representatives of people living in states—not territories or other non-state entities—otherwise they would not have qualified "People" with "of the several States." This clause could have read, "by the American People" or "by the People of the several States, territories, districts, forts..." But the clause limits the representatives to those of the people who live in states.

The District of Columbia is not a state. And as the Administration points out in its Statement of Administration Policy (SAP) on this bill, the Constitution contains 11 other provisions expressly linking congressional representation to statehood.

In 2000, a three-judge panel concluded in *Adams v. Clinton* "that the Constitution does not contemplate that the District may serve as a state for purposes of the apportionment of congressional representatives." The Supreme Court affirmed that decision.

If the District of Columbia were to become a state, then its citizens would certainly be entitled to full representation in the U.S. House of Representatives and the U.S. Senate. Article IV, Section 3, Clause 1 states that "New States may be admitted by the Congress into this Union." Some people have argued that this clause allows Congress to treat DC as a state (or to admit it as a state formally). This argument is questionable for two reasons:

1. Given the statements of James Madison quoted above and the intentions of the Founders in carving a representationally neutral district out of the lands of two states because of the prevailing suspicions of locating the nation's capital and its Congress in a state that then sends a representative thereto, it is difficult to imagine that this clause of Article IV was intended to be used to reverse the status of the seat of the federal government.
2. In the past, when changes were made to the electoral and representational status of the District of Columbia as if it were a state, they were made by constitutional amendment.

The 23rd Amendment to the Constitution, ratified in 1961, gave DC the right to appoint "a number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State." (emphasis added) That is, for DC to be treated like a

state for the purposes of choosing presidential electors, the Constitution was amended. The amendment continues: “they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform, such duties as provided by the twelfth article of amendment.” Again, for DC to be treated like a state for the purposes of choosing presidential electors, the Constitution was amended.

There is no reason to believe that treating DC as a state for the purpose of choosing House Members (a function listed in Article I of the Constitution) can be done statutorily, when treating DC as a state for the purpose of choosing presidential electors (a function listed in Article II of the Constitution) was done by constitutional amendment.

As the Senate Republican Policy Committee noted recently, “in 1978, a constitutional amendment granting voting representation to D.C. was approved by both the House and the Senate, but failed to win the ratification of the requisite number of states. When the House Judiciary Committee, under the leadership of Democratic Chairman Peter Rodino, reported out H.J.Res. 554, the accompanying report stated the following: ‘If the citizens of the District are to have voting representation in the Congress, a constitutional amendment is essential; *statutory action alone will not suffice.*’”

For additional background on the history of the District of Columbia, visit these webpages:

<http://www.citymuseumdc.org/gettoknow/faq.asp>

<http://www.dcpages.com/History/>.

RSC Bonus Fact: The City of Alexandria and Alexandria County (now Arlington County) used to be part of the District of Columbia. However, in 1846, after petition from (mainly) merchants in the area the lands of DC south and west of the Potomac River were retroceded to the State of Virginia. As a result of this process, DC lost one third of its total area, and Virginia gained two members of the U.S. House of Representatives.

<http://www.citymuseumdc.org/gettoknow/faq.asp>

Committee Action: On March 9, 2007, the bill was referred to the Judiciary Committee and the Oversight and Government Reform Committee. On March 13th, the Oversight and Government Reform Committee marked up and ordered the bill reported to the full House by a vote of 24-5. On March 15th, the Judiciary Committee marked up the bill and ordered it reported to the full House by a vote of 21-13. As of press time, the version of the bill scheduled to come to the House floor is the introduced version of the bill, which would not take into account any of the amendments made at the committee level.

Possible Conservative Concerns: Some conservatives may be concerned that this bill is unconstitutional in its statutory attempt to treat the District of Columbia as a state for the purpose of representation in the U.S. House of Representatives (see full discussion in the “Additional Background” section above). Some conservatives may also be concerned that one state, presumably Utah at first, would have residents who are represented by two Members of the U.S. House, itself a constitutionally dubious proposition.

Some conservatives may also be concerned that, because this legislation does not contain expedited judicial review provisions, the likely court challenges to this legislation could last for many years. Meantime, the House would presumably continue to consider and pass legislation with 437 Members, including a DC representative. If H.R. 1433 were eventually found to be unconstitutional (which is likely, given the recent Supreme Court affirmation discussed above), it is possible that the court could also rule that all legislation passed with a DC representative is invalid, undoing years of legislative work and negating the representative voices of American citizens nationwide. Or the court could rule that any legislation passed in the House by a margin of one or two votes (in which the DC representative and the 437th representative made the difference) is invalid.

Lastly, some conservatives, who may be less likely to oppose this legislation because of the creation of a congressional seat from traditionally Republican Utah as a counterbalance to the creation of a reliably Democrat seat for DC, may be concerned that the bill does not guarantee the additional seat for Utah, nor does it guarantee that the seat be Republican. The extra seat could easily be given to a Democrat-leaning state in a future reapportionment, or Utah, even if it retains the seat, could elect a Democrat for it (just as the “red state” of South Dakota has elected and re-elected its Democrat House Member, and just as the Democrat representative from eastern and central Utah has been re-elected for a fourth term).

Administration Position: The Administration “strongly opposes” H.R. 1433 on constitutional grounds. To read the full Statement of Administration Policy (SAP), go to this webpage: <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr1433sap-r.pdf>.

Cost to Taxpayers: CBO estimates that H.R. 1433 would increase mandatory spending by about \$200,000 in FY2008 and by about \$2.5 million over the FY2008-FY2017 period (for the salary and associated benefits for the new at-large representative). **As such, this legislation would violate House Rule XXI, Section 10, and be subject to a PAYGO point of order on the House floor.**

In addition, the bill would authorize about \$1 million in FY2008 and about \$9 million over the FY2008-FY2012 period (for administrative and expense allowances available for Members).

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, in two significant ways. The bill would statutorily treat the District of Columbia as a state for the purpose of representation in the U.S. House and would increase the whole number of the House by two seats to 437.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, the bill contains an intergovernmental mandate in its preemption of laws in the state of Utah that govern the election of Members of the House of Representatives. The bill would require the state to elect an additional Member of the House using a statewide (at-large) election.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Oversight and Government Reform Committee, in House Report 110-52,

Part I, writes that, “H.R. 1433 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits.”

Constitutional Authority: The Oversight and Government Reform Committee, in House Report 110-52, Part I, cites constitutional authority in Article I, Section 8, Clauses 17 and 18 (the power of Congress to exercise exclusive legislation over DC in all cases and the necessary and proper clause); Article I, Section 4, Clause 1 (the congressional power to alter the regulations for congressional elections); and Article I, Section 2, Clause 1 (House Members chosen by the people of the several states). The Judiciary Committee, in House Report 110-52, Part II, cites constitutional authority in Article I, Section 8, Clause 17 (the power of Congress to exercise exclusive legislation over DC in all cases); Article I, Section 4, Clause 1 (the congressional power to alter the regulations for congressional elections); and Article I, Section 2, Clause 3 (regarding congressional district apportionment).

Note: Article VI, Clause 3 of the U.S. Constitution states that, “The Senators and Representatives...and all executive and judicial Officers...shall be bound by Oath or Affirmation, to support this Constitution.” See the “Additional Background” discussion above.

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